RECENT IMPORTANT DECISIONS

AUTOMOBILES—CONSTITUTIONALITY OF STATUTE MAKING OWNER LIABLE FOR INJURY CAUSED BY ANOTHER'S NEGLIGENT DRIVING.—The automobile of D, driven negligently by his fifteen-year-old son, injured P. In an action for damages, D offered evidence that his son took and was driving the automobile against his express orders. *Held,* such evidence is not admissible in view of PUBLIC ACTS OF 1915, No. 302, Sec. 29, providing that if the motor vehicle is being driven at the time of the injury by an immediate member of the owner's family it shall be conclusively presumed that it was with the owner's consent and knowledge. (Affirmed by a divided court.) *Hawkins* v. *Ermatinger* (Mich., 1920), 179 N. W. 249.

The aim of this statute is to place upon the owner liability for damage caused by his automobile's negligent operation by an immediate member of his family. This is in effect a substantive rule of law, not a mere rule of evidence. WIGMORE'S EVIDENCE, Vol. 2, p. 1665. The statute making the owner liable without fault on his part, if within the power of the legislature, must be within their police power. The police power of a state embraces all regulations designed to promote the general welfare or prosperity. *Chicago Ry. Co.* v. *Drainage Comm.*, 200 U. S. 561; *Noble State Bank* v. *Haskell*, 219 U. S. 104; *Eubank* v. *City of Richmond*, 226 U. S. 137. The legislature in the exercise of this power may regulate the use of vehicles on the streets and highways. *Radnor* v. *Bell*, 27 Pa. Super. Ct. 1; *People* v. *Schneider*, 139 Mich. 673. To justify the state in thus interposing its police power in behalf of the public, it must appear, first, that the interest of the public generally, as distinguished from those of a particular class, require such interference; and second, that the means are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon the individual. *Lawton* v. *Steele*, 152 U. S. 133. Such legislation will not be overthrown by the courts unless utterly unreasonable or purely arbitrary. *Otis* v. *Parker*, 187 U. S. 606; *McLean* v. *State of Arkansas*, 211 U. S. 539; *Schmidinger* v. *Chicago*, 226 U. S. 578. The automobile driven by an irresponsible driver is indeed a danger and some reasonable means of protecting the public from such danger is a proper act of the legislature. But such protective legislation must be considered in relation to the due process clause of the Fourteenth Amendment. A father is not liable for the tort of his child simply because of paternity. *Smith* v. *Jordan*, 211 Mass. 269; *Zeeb* v. *Bahnmaier*, 103 Kan. 599. This statute, holding a party absolutely liable for the conduct of another, no matter how careful or free from negligence he himself has been, is in effect taking the property of one party to pay for the wrongful and negligent act of another, not in the relation of a servant or agent to him. *Daugherty* v. *Thomas*, 174 Mich. 371. This is indeed taking property without due process of law. *Camp* v. *Rogers*, 44 Conn. 291. To be sure, the rights of the individual are not free from reasonable enactments

in the interest of the common welfare. *Cal. Reduction Co.* v. *Sanitary Co.*, 199 U. S. 306; *Barbier* v. *Connolly*, 113 U. S. 27. Whether or not a particular statute is reasonable must depend, then, on the enormity of the evil and the fitness of such legislation to afford a remedy. *Adams* v. *Tanner*, 244 U. S. 590. It is suggested that a statute imposing liability without fault is very harsh and should be disfavored by the courts. There should be adopted a more reasonable method of enforcing a duty upon the owner of an automobile to keep it safe from negligent drivers. The danger from carelessly driven automobiles would not seem to be so great that a remedy as confiscatory as the one in the principal case is needed. It is submitted that the above statute should be held unconstitutional as being an unreasonable and arbitrary method of accomplishing the purpose of the legislature.

BROKERS—NOT ENTITLED TO COMMISSIONS FOR SALE OF STEAMERS PREVENTED BY WAR SHIPPING STATUTE AND PROCLAMATION.—On January 27, 1917, the plaintiffs, shipbrokers, entered into a contract to sell two steamers for the defendants. A Canadian firm was procured as a buyer, the sale to be subject to its inspection. On February 5, 1917, before the sale was completed, a proclamation was issued by the President, declaring an emergency and calling into effect a statute enacted September 7, 1916, prohibiting the sale of United States registered vessels to foreign owners unless first tendered to the Shipping Board. The Shipping Board declined to permit the sale and the defendant refused to transfer the steamers. In an action to recover commissions, *held*, the statute and proclamation constituted a legal justification and excuse for defendant's refusal to perform, and no commissions could be recovered. *Damers* v. *Trident Fisheries Co.* (Me., 1920), 111 Atl. 418.

If performance of a contract becomes impossible or illegal by reason of a change in the law, the promisor is no longer bound. *American Mercantile Exch.* v. *Blunt*, 102 Me. 128; *Public Service Co.* v. *Public Utility Commrs.*, 87 N. J. L. 128; *Lowey* v. *Granite State Prov. Assn.*, 28 N. Y. Supp. 560; *Andrew Miller & Co.* v. *Taylor & Co.*, [1916] 1 K. B. 402. The law on this subject has been greatly augmented by litigation growing out of the war and its effect on the performance of contracts. It has been held that a party who becomes unable to perform a contract due to anticipatory war measures will be excused from further performance. *Foster* v. *Compagnie Française de Navigation à Vapeur*, 237 Fed. 858. Likewise, the outbreak of war, making illegal commercial intercourse with enemy countries, will excuse a vendor from delivering goods to an enemy subject. *Jager* v. *Toline*, [1916] 1 K. B. 939; *Edward Grey & Co.* v. *Toline* (1915), 31 Times L. R. 551. Or from delivering goods which were to be obtained from an enemy country. *Verthardt & Hall* v. *Rylands Bros.* (1917), 86 L. J. Ch. (N. S.) 604; *Cooper* v. *Neilson & Maxwell* (1919), Vict. L. R. 66; or to be manufactured in enemy territory. *Ross* v. *Shaw* (1917), 2 Ir. R. 367. For many other recent cases see note in 3 A. L. R. 11. In the instant case it was objected that the statute did not apply, having been made before the